



Legislative Update

Covering Criminal Justice Legal Issues

Department of Public Advocacy

No. 7, 2000

Governor Patton Supports Blue Ribbon Group Recommendations



Governor Paul Patton

Governor Paul Patton announced his budget on January 25, 2000. Included in his announcement was his strong support for the recommendations of *The Blue Ribbon Group Improving Indigent Defense in the 21st Century*. In *Executive Budget 2000-2002: Setting the Course for a New Century*, it is stated that "The 2000-2002 budget responds to the Blue Ribbon report and ensures that Kentucky meets its constitutional obligation to provide legal representation for indigent citizens accused of serious crimes. The Governor's budget recommendation includes \$4 million in fiscal year 2001 and \$6 million in fiscal year 2002...." By making this commitment, the Governor has made a significant down payment on the implementation

of the recommendations of the Blue Ribbon Group.

Higher Defender Salaries

The Governor's budget would achieve in whole or in part many of the most significant recommendations of the Blue Ribbon Group. First, the budget would "bring public defender salaries even with comparable positions in the southeast region." The budget includes \$1,255,500 in the first year of the biennium, and \$2,622,300 in the second year of the biennium. This will fully implement the Blue Ribbon Group's Recommendation #4, which was that "higher salaries should be paid to defenders and prosecutors; salary parity is the goal."

Full-time Offices

The Governor's budget also allows for continued significant progress toward the goal of covering all 120 counties from a full-time office. By the end of this biennium, 83 counties will be covered from 25 full-time offices. The Governor's budget allows for 24 additional counties to be covered during the next biennium. In the first year of the biennium, 17 counties would be covered from existing offices. The appropriation to next accomplish this is \$445,000. In the second year of the biennium, \$1,239,400 is appropriated to continue coverage of the 17 counties and to cover an additional 7 counties by the opening of 2 additional offices in Mayfield and Bullitt Counties.

By the end of the 2002 biennium, 107 of Kentucky's 120 counties will be covered by a full-time office if this budget is implemented. The remaining counties can easily be covered by the opening of 3 new offices in the 2002-2004 biennium.

The Blue Ribbon Group's Recommendation #3 reads, "the full-time system should be completed." The Governor's budget makes significant progress toward achieving this goal.

Caseload reduction

Finding #5 of the Blue Ribbon Group was that "the Department of Public Advocacy per attorney caseload far exceeds national caseload standards." Recommendation #7 reads that "full-time staff should be increased to

bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas."

This recommendation is only partly funded in the Governor's budget. Caseload reduction will begin in the 4th quarter of 2001-2002 with the hiring of 10 lawyers. This will not enable DPA to lower the average caseloads to 450 in urban areas and 350 in rural areas. It is hoped that it will enable DPA to lower caseloads in the offices with the highest caseloads. This is a significant step toward addressing public defender caseload problems. This will become a major focus of our 2002-2004 budget request.

Other

The Governor's budget will allow DPA to address the major recommendations of the Blue Ribbon Group. In addition, money will be made available to hire one appellate branch attorney, one capital trial branch attorney, and money for "adequate support services to the public defender system."

Conclusion

The Blue Ribbon Group Recommendation #12 is that "\$11.7 Million additional funding for each of the 2 years is reasonable and necessary to meet DPA's documented funding needs." DPA can fully implement the recommendations of the Blue Ribbon Group with \$6.6 million additional in FY 03 and \$5.5 additional in FY 04. At that time, Kentucky will have joined the rest of the nation in adequately funding the constitutionally mandated delivery of services to indigents charged with crimes. Governor Patton's budget takes a significant step toward achieving this goal during the next four years.

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Public Defender National Benchmarks: How Does Kentucky Fare?

By Secretary Robert Stephens, Justice Cabinet Michael Bowling, Esq.,
Wilson, Stanley, Bowling & Costanzo

Kentucky is at the bottom, seeking the midpoint

Criminal justice professionals understand that there are critical indicators for the health, viability, and effectiveness of criminal justice organizations.

Some of the key indicators for a public defender program are:

- cost-per-case, indicating how much funding has been provided to do each of the cases;
- caseload averages, indicating how much work each attorney is being asked to do;
- cost-per-capita, indicating how much funding has been given to a program against the general population of the jurisdiction;
- attorney salary levels, indicating of the quality of who can be hired and retained;

How does Kentucky fare when compared to other similar state public defender systems? In assessing Kentucky's statewide public defender system according to national benchmarks in the *Final Report of the Blue Ribbon Group* issued June 1, 1999, The Spangenberg Group selected 19 states to compare Kentucky to based on the following criteria: proximity, systems organized and administered at a state level, systems funded at the state level, states with regional public defender offices, states with a death penalty, and states that collect reliable state-wide data.

The following are the national averages for FY 98:

Cost-per-case: \$ 372.47
Cost-per-capita: \$ 7.83
Salary, entry level: \$32,396.

How does Kentucky match up to these national averages? Kentucky's figures for FY 98 are:

Cost-per-case: \$ 188
Cost-per-capita: \$ 4.90
Salary, entry level: \$ 23,388

According to the 1999 *Final Report of the Blue Ribbon Group* "Results of the comparison show that Kentucky ranks among the worst in the nation in key indicators such as indigent defense cost-per-capita, indigent defense cost-per-case, and public defender salaries....Public defenders in Kentucky carry caseloads that far exceed national caseload standards....The percentage of alternative revenue funds Kentucky raises and dedicates to indigent defense ranks among the highest in the nation." *Id.* at 2-3.

FY 97 Cost-Per-Case and Per-Capita-Cost. According to their further findings, Kentucky ranked fifth in FY 97 in number of cases handled. Yet, Kentucky was second to last in total dollars spent on indigent defense, thus ranking last in indigent defense cost-per-case at \$161.10. Kentucky spent \$4.28 per-capita which also placed it in last place.

FY 98 Cost-Per-Case and Per-Capita-Cost. At \$187.96, Kentucky ranked last in cost-per-case in FY 98. Only one state spent less per-capita than Kentucky did at \$4.90. Meanwhile, Tennessee spent \$6.73 per-capita.

Caseloads. Kentucky defenders are handling more cases per attorney than virtually any other state it was compared to. The following caseloads were the averages in Kentucky defender offices in FY 98: Louisville: 700; Lexington 545; Ashland 737; Hazard 612. National caseload standards are 150 felonies per attorney per year, or 400 misdemeanors, or 200 involuntary commitment cases, or 25 appeals. The goal is to reduce caseloads to 450 cases opened a year per attorney in urban areas and 450 in rural areas.

Salaries. Of all the states, Kentucky has the lowest entry level attorney salary at \$23,388. The average for 23 comparison jurisdictions was \$32,396, nearly a \$10,000 difference. At the 5-year level, Kentucky defenders make an average of \$39,289, which is second last. Kentucky ranks last in paying supervisors.

Findings in *The Final Report of the Blue Ribbon Group* were:

Finding #4: The Department of Public Advocacy Ranks at, or Near, the Bottom of Public Defender Agencies Nationwide in Indigent Defense Cost-Per-Capita & Cost-Per-Case.

Finding #5: The Department of Public Advocacy Per Attorney Caseload Far Exceeds National Caseload Standards.

Finding #6: The Department of Public Advocacy Ranks At, or Near, the Bottom of Public Defender Salaries Nationwide for Attorneys at All Experience Levels.

Recommendations of the Blue Ribbon Group based on these Findings are:

Recommendation #2: The Kentucky Public Defender System Cannot Play its Necessary Role for Courts, Clients, and the Public in this Criminal Justice System Without a Significant Increase in Funding.

Recommendation #4: Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

Recommendation #6: Full-Time Trial Staff Should Be Increased to bring Caseloads Per Attorney Closer to National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.

Seeking the Midpoint Nationally. Kentucky is at the bottom in all of these key indicators. The Blue Ribbon Group recommendations are modest in their goal of seeking to bring Kentucky up to the middle nationally in all these categories which are key indicators of the ability of the state-wide public defender program to effectively and efficiently meet its responsibilities to clients, courts, and citizens.

Private Lawyers Serve Important Role in Full-time System

By Jim Lovell, Esq.

The public defender system in Kentucky has for decades been dependent upon the services of private lawyers in the defense of the indigent, often at no cost. The system first used an assigned counsel system and, more recently, went to a contract system. private Criminal Defense bar litigation helped bring about the passage of KRS Chapter 31, yet the private defense bar has continued to serve.

Although the Public Advocacy Commission, the 1998 General Assembly, the Blue Ribbon Group, and the Criminal Justice Cabinet have all contributed to the development of the full-time public defender system in Kentucky, private defense lawyers still can and should be a part of this system that provides a necessary service to public defender clients. The 1992 *ABA Standards for Criminal Justice Providing Defense Services, Standard 5-1.2(b)* states that every "system should include the active and substantial participation of the private bar."

The Department of Public Advocacy heartily endorses the continued involvement of the private bar as a partner in the full-time system. At present, DPA represents over 100,000 clients a year. Many of these cases involve conflicts of interest, estimated to be as high as 10% of the cases. these conflicts exist at the trial and post-trial level. Some of them involve capital murder cases. Some of them involve cases where caseload does not allow representation by a full -time defender (as is now the case with Court of Appeals cases).

There will and always should be a significant place for the private criminal defense bar in the work of the public defender system.

<p style="text-align: center;">Appropriations & Revenue Subcommittee (A & R) Hears from Public Advocate</p>

On Oct 28, 1999 Public Advocate Ernie Lewis presented DPA's funding needs to the Joint Interim Appropriations and Revenue Committee. During the questioning following Lewis's remarks, **Senator Ed Worley** made the following observations.

Thank You Mr. Chairman. I have known Ernie Lewis for many years and I have personally witnessed the work that he has done in the Public Defender Office in Richmond and provided tremendous representation that was very badly needed to a lot of indigent people. In looking at your presentation, it appears that a starting public defender makes \$23,000 a year. That is about \$10.00 an hour on a 2,000, 40 hour work week. 2,080 hours a year, 40 hour work week, that would work out.

To speak in support of his proposal and just for the committee to draw a comparison, in your routine contracts on page 18, there is a contract for \$125.00 an hour for legal services, \$40 an hour for a paralegal to a law firm in Lexington, and the contract description is to provide legal representation in employment law where counsel provided by in-house personnel because of workload considerations. There is nobody in the world that has a greater workload than the public defenders of Kentucky. And it's atrocity to think that we ask them to support the indigent people of the state at a rate of \$10.00 an hour when we are going to pay to take care of the state's business at \$125.00 an hour and \$40 an hour for a paralegal because their people are too busy. And I submit to you that all throughout state government, we are chalked full of lawyers that don't work nearly as hard as the public defenders of Kentucky. Thank you, Mr. Chairman.

The Public Value of Kentucky Public Defenders

Public defenders provide significant value to the people of Kentucky. Anthony Lewis, New York Times Pulitzer Prize winning columnist, has observed that "The lawyers who make Kentucky's indigent defense system work are in a great tradition. They prove what Justice Holmes said long ago: 'It is possible to live greatly in the law.'" The values that public defenders provide to the citizens of the Commonwealth add to Kentucky's wealth in uncommon ways.

1. Fair process that brings results we can rely on in criminal cases is the service defenders provide Kentuckians.
2. Defenders help over 100,000 poor Kentuckians with their legal problems when those citizens are accused of or convicted of a crime.
3. In the district and circuit courts in all 120 counties and in the Kentucky Supreme Court and Court of Appeals, defenders serve the Courts' need to fully understand both sides of the dispute before the decision is made.
4. Defenders serve the public's need for results in which they can have high confidence.
5. Defenders serve the citizens we represent by insuring their side of the dispute is fully heard and considered before their life or liberty is taken from them.
6. Defenders help children in juvenile court, addressing many of their family, educational, and social problems in order to help them become productive and law-abiding adults.
7. Defenders help the criminal justice system insure that fairness and reliability is not only what we say but what we do every day in the Courts of the Commonwealth.

Public Defenders Announce Annual Caseload and Average Case Funding Amounts

(November 19, 1999, Frankfort, Kentucky) The Kentucky Department of Public Advocacy (DPA) today presented its *FY 99 Defender Caseload Report* (July 1, 1998 - June 30, 1999) to the Public Advocacy Commission.

The *FY 99 Caseload Report* was released at a significant time for DPA. In the Spring of 1999, the *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* (BRG), chaired by Secretary of the Justice Cabinet Robert Stephens and former State Representative Mike Bowling, released a report showing that DPA is in need of \$11.7 million additional General Fund dollars in order to climb out of its position as the poorest-funded public defender agency in the nation. Ernie Lewis, Kentucky Public Advocate, stated that "the Blue Ribbon Group's recommendations provide the strongest statement of support for a significant increase in funding for indigent defense delivery. One of the BRG's primary concerns was the high caseloads of Kentucky public defenders. This year's *FY 99 Caseload Report* demonstrates that while progress has been made, the BRG's funding recommendations are needed more than ever. Caseloads continue to rise in the trial arena. Salaries for defenders remain the lowest in the nation at \$23,388 for starting defenders. Indigent defense in Kentucky continues to lag behind in all of the most significant benchmarks. This is the year we must do better in funding indigent defense."

More cases than ever were handled by public defenders in the trial courts of Kentucky in 1999. 97,646 cases were reported in 1999, up from 93,238 cases in 1998. This occurred despite an overall reduction in the violent crime rate.

More cases are being handled by full-time attorneys than ever. When Ernie Lewis began as Public Advocate in October 1996, he announced a goal of having 85% of public defender cases being handled by full-time attorneys. That goal has been reached as of the release of this caseload report: 86% of the 1999 caseload was handled by full-time attorneys; 14% was handled by private lawyers in contract counties. Public Advocate Lewis has now announced a goal of completing the full-time system in all 120 counties by the end of the next biennium. He is asking the next General Assembly for funding to complete the full-time system by June 30, 2002, by adding six additional full-time offices.

Funding by the 1998 General Assembly has resulted in some progress during this biennium.

- Funding provided by the last General Assembly increased the funding-per-case to \$210 in FY99. The BRG recommended a cost-per-case of \$300 in order to place Kentucky's DPA in the middle of the nation's indigent defense delivery systems. Likewise, funding per-capita has increased to \$5.90, short of the \$8.00 per capita set by the BRG.
- Defender caseloads have been reduced only slightly in FY99. One of the major concerns of the BRG was Kentucky public defenders' caseloads, which are far in excess of national standards. The BRG recommended that funding be provided to lower the caseloads of Kentucky defenders to 450 in urban areas and 350 in rural areas. The average Kentucky defender caseload in FY 99 was a mixture of 475 felonies (including capital), misdemeanors, and juvenile cases, down from 480 in FY 98. Caseloads remain high in some areas, including 603 in Louisville, 650 in Hazard, 618 in Henderson, and 1100 in Owensboro.

Under KRS Chapter 31, Section 11 of the Kentucky Constitution and the Sixth Amendment to the United States Constitution, DPA is responsible for representing all indigents charged with or convicted of a crime, those proceeded against under KRS Chapter 202A (Kentucky's involuntary commitment process), and those prosecuted for civil contempt.

DPA has more than 27 years of serving the needs of Kentucky citizens accused or convicted of a crime. DPA provides representation through its 25 full-time regional offices covering 80 counties and contract programs covering 40 counties. A history of defender services in Kentucky is found at <http://www.dpa.state.ky.us/Overview.htm>.

Once again, public defenders in Kentucky have served over 100,000 poor people charged with or convicted of crimes. Public defenders have labored under low salaries and high caseloads in the highest tradition of the bar. Public Advocate Ernie Lewis said that, "this has been a solid year of achievement by Kentucky's public defenders. It is time now to fund this program so that these defenders have reasonable caseloads and salaries, and so that this Commonwealth can take pride in providing for the least among us."

FY 99 Totals

Population	3,628,869
Reported Cases.....	101,732
Average Case	
Funding.....	\$210.29
Funding per Capita.....	\$5.90

Blue Ribbon Group Supports Full-time Defender System

By Michael Bowling, Esq., Wilson, Stanley, Bowling & Costanzo

The full-time public defender system in Kentucky has been developing since the inception of KRS Chapter 31. Jefferson County and Boyd County were served by full-time offices prior to KRS 31 being passed. Lexington, Paducah, and several eastern Kentucky offices were opened during the 1970s. However, by 1996, only 47 counties were served by full-time offices. The remaining 73 counties were served by part-time lawyers serving on contract.

This situation existed despite the decision by the Public Advocacy Commission in the early 1990s to support a move toward a full-time system. It also existed despite the acknowledgment in most national standards that a full-time system was the superior method for delivering cost-efficient indigent defense services. For example, in the *NLADA Standards for Defender Services* (1976), it was recommended that a "full-time defender organization should be available for all communities, rural or metropolitan, as the preferred method of supplying legal services." The 1992 ABA *Standards for Criminal Justice, Chapter 5, Providing Defense Services, Standard 5-1.2* stated that "When adequately funded and staffed, defender organizations employing full-time personnel are capable of providing excellent defense services. By devoting all of their efforts to legal representation, defender programs ordinarily are able to develop unusual expertise in handling various kinds of criminal cases. Moreover, defender offices frequently are in the best position to supply counsel soon after an accused is arrested." Finally, the 1992 ABA *Standards for Criminal Justice, Providing Defense Services, Standard 5-1.2* stated that "each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization. Multi-jurisdictional organizations may be appropriate in rural areas."

The development of the full-time method for delivering indigent defense services is consistent with what is occurring in the rest of the criminal justice system. The conversion of part-time to full-time Commonwealth's Attorneys has been occurring over the past few years, and continues in this biennium. The judiciary, probation and parole, court-designated workers, pretrial release officers are all full-time and along with prosecutors and defenders constitute a professional criminal justice system.

In 1998, the General Assembly moved the development of the full-time public defender system forward significantly. Five new full-time offices were funded in Owensboro, Bowling Green, Columbia, Paintsville, and Maysville. By the end of the biennium, 82 counties will be served by 25 full-time trial offices.

The Department of Public Advocacy is committed to completing the full-time system in the near future. The opening of six additional offices in Mayfield, Eddyville, Bullitt County, Burlington, Cynthiana, and Glasgow remains to be done. The remaining counties can be served from now-existing offices.

One of the most significant benefits of a full-time system is that once it is in place, funding should no longer be the significant problem that it is today. Thereafter, funding decisions can be tied to the passing of new legislation, the creation of additional judicial positions, or a significant increase in caseload.

Another significant benefit will be that there will be a marked increase in management, supervision, and accountability. Caseload tracking will be more accurate. Cases will move more expeditiously. Supplying attorneys to courts, particularly in juvenile court, will create efficiencies that do not now exist.

The Blue Ribbon Group was presented with the DPA's plan to complete the full-time system. The Blue Ribbon Group endorsed the full-time delivery method and DPA's plan for completing the full-time system. This plan was incorporated into Recommendation No. 3: The Full-Time System Should Be Completed.

The Criminal Justice Council also considered the DPA's plan to complete the full-time system, and endorsed this recommendation of the Blue Ribbon Group.

Blue Ribbon Group Excerpts from the Final Report

The Department of Public Advocacy (DPA) is a statewide entity responsible for overseeing the delivery of indigent defense services in Kentucky's 120 counties. A 12-member Public Advocacy Commission assists the DPA with budgetary and certain supervisory responsibilities and conducts public education about the purpose of the public advocacy system. The Department of Public Advocacy with its history of strong leadership and sound structure is one that is poised for excellence. Unfortunately, the agency has been plagued with under-funding for many years, making it impossible to fulfill its potential as a legal services provider.

After several efforts to study and document the effects of chronic under-funding (including several studies conducted by The Spangenberg Group) and relatively little official response to remedy the situation, in 1998, Public Advocate Erwin W. Lewis spearheaded the formation of a *Blue Ribbon Group* to develop a strategy for improvement. The Kentucky *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* consists of more than 20 distinguished members representing all three branches of government, the bar and key officials of criminal justice agencies across the state (the membership of the group appears in Appendix A of this report). The Group adopted a clear-cut mission statement:

To address the chronic problems of the Kentucky public defender system and propose solutions in light of national information and standards, in order to create a strategy for ensuring an appropriately funded indigent defense system for the 21st century.

To assist the Group in its mission, the DPA contracted with The Spangenberg Group (TSG) of West Newton, Massachusetts, to assist the members by providing detailed information from other states regarding many of the issues that were placed on the table by the Blue Ribbon Group. The Spangenberg Group is a nationally recognized criminal justice research and consulting firm specializing in the delivery of indigent defense services. During the past 15 years, The Spangenberg Group has worked with task forces and commissions in more than half of the states in the country. The Spangenberg Group was retained on this project through a federal Edward G. Byrne Memorial grant awarded to DPA by the Kentucky Justice Cabinet.

The Blue Ribbon Group met on three occasions. The first meeting was held in Frankfort at the Kentucky Bar Association Headquarters on March 5, 1999. The second meeting was held in the same place on April 23, 1999, at which time the Blue Ribbon Group voted on a number of recommendations. The final meeting was held on May 25, 1999, when the Group endorsed this report and the recommendations contained in the final chapter.

TSG selected 19 states*for comparison with Kentucky. The states were selected on the basis of six criteria:

1. States in close proximity to Kentucky;
2. States with fully state-funded indigent defense systems;
3. States organized and administered at the statewide level;
4. States with regional public defender offices;
5. States that have the death penalty; and/or
6. States that collect reliable data at the statewide level.

A number of key indicia were gathered from the 19 states for comparison with Kentucky, including:

- the total statewide number of indigent defense cases handled in fiscal year 1998;
- a breakdown of the statewide indigent defense caseload by case type;
- the total statewide expenditure for indigent defense including public defender programs, court-appointed counsel and contract defenders in fiscal year 1998;

- the portion of each state's indigent defense expenditure provided by the state;
- the indigent defense expenditure provided by counties; and
- the total amount of money generated for indigent defense programs through additional, non-general fund revenue sources in fiscal year 1998.

Results of the comparison show that Kentucky ranks among the worst in the nation in key indicators such as indigent defense cost-per-capita, indigent defense cost-per-case, and public defender salaries. Starting salaries for public defenders in Kentucky were the lowest among the states surveyed - \$23,388. The stark disparities in pay between Kentucky public defenders and public defenders from other states continue as attorneys gain more experience and assume greater responsibilities.

Public defenders in Kentucky carry caseloads that far exceed national caseload standards. High caseloads take an immediate toll on attorney morale and performance, calling into question the level of advocacy provided on behalf of clients. High employee turnover, and its accompanying perpetual state of hiring and training, has become a fact of life in several of the DPA offices.

The goal of the DPA for many years has been to have regional offices providing public defender representation in all parts of the state. The under-funding of the DPA has stymied this goal; thus, regional offices operate in only 73 of the state's 120 counties. In 47 counties, representation is provided by attorneys who are under contract with the DPA.

One of the ways in which Kentucky has attempted to deal with the under-funding of indigent defense services is to rely on various alternative revenue sources such as administrative fees, assessments and recoupment in order to avoid providing a greater general fund appropriation to the DPA. Currently the DPA receives supplemental funding from a \$52.50 administrative fee assessed on all indigent persons who are assigned a public defender or court-appointed attorney. It also receives 25% of the \$200 service fee assessed against all individuals convicted of drunk driving. Counties are required to assess 12.5 cents per capita to contribute toward a fund established to pay for expert witnesses and other necessary costs associated with providing indigent defense services. Recoupment collections ordered by the court are returned to the county in which they were ordered to help supplement the county assessment.

The percentage of alternative revenue funds Kentucky raises and dedicates to indigent defense ranks among the highest in the nation. In FY 1998, 15.2% of all funds for indigent defense came from these alternative revenue sources. While this effort is laudatory, it is important to recognize that supplemental alternative revenue is not a replacement for adequate general funding. Indigent populations by definition do not have adequate funds to self-finance government provided services, and there will always be a percentage of indigent defendants who simply cannot afford to pay administrative fees or other court costs. We believe that Kentucky has achieved an impressive rate of alternative revenue, but that the Commonwealth must be realistic in recognizing this source of funds is strictly limited.

The Spangenberg Group views the DPA as a well-managed program that has made impressive strides despite its funding struggles. The DPA has recognized the importance of maintaining healthy and positive relationships with all three branches of government and has worked cooperatively with each agency in Kentucky's criminal justice system. This has occurred with a clear understanding of the agency's primary responsibility to the clients they represent following court appointment.

Furthermore, TSG believes that this administration has a sense of the urgency of managing the agency's funds on behalf of the public in an efficient and professional manner.

Among the many examples that illustrate this are the following:

1. The Public Advocate has regionalized the delivery of trial services across the state;
2. A substantial improvement has been made in defender education;
3. The DPA has, as in years past, been highly successful in the securement of federal

- funds, particularly regarding Byrne grants;
4. Serious attempts have been made by management to urge the increased collection of additional revenue through letters, telephone calls and visits to staff and judges;
 5. Substantially improved computerized management information and case-tracking systems are now in place; and
 6. The Public Advocate and the Deputy Public Advocate have spent hundreds of hours on the road visiting with key leaders in government and the criminal justice system, and explaining in a clear and responsive way the needs of the agency.

Set out below in summary form are the report's findings and recommendations. Full commentary is provided in the report.

Findings:

#1 – The Department of Public Advocacy is a Solid, Efficient, and Well-Managed Program.

#2 – The Department of Public Advocacy Has Implemented an Impressive Plan for the 1998- 2000 Biennium.

#3 – The Department of Public Advocacy is Effective in Indigent Defense Cost Recovery Compared to Other States.

#4 – The Department of Public Advocacy Ranks at, or Near, the Bottom of Public Defender Agencies Nationwide in Indigent Defense Cost-Per-Capita & Cost-Per-Case.

#5 – The Department of Public Advocacy Per Attorney Caseload Far Exceeds National Caseload Standards.

#6 – The Department of Public Advocacy Ranks At, or Near, the Bottom of Public Defender Salaries Nationwide for Attorneys at All Experience Levels.

#7 – All Components of the Criminal Justice System Should be Adequately Funded Particularly Public Defense. Overall the Department of Public Advocacy is Under-Funded.

#8 – The Department of Public Advocacy is Experiencing Other Effects of Chronic Under-Funding.

#9 – Without Additional General Fund Revenues, a Deficit will Occur in the General Fund Account On or Before July 1, 2000.

#10 – The Appellate Branch is Limited in its Ability to Handle the Workload in the Court of Appeals and the Supreme Court.

#11 – The DPA Post-Conviction Branch is Unable to Provide Representation to Hundreds of Inmates Who Have the Right to Counsel in Kentucky.

#12 – As DPA Moves Toward a Fully Staffed Statewide Program, the Demands on the Law Operations Division (LOPS) Will Grow Dramatically. Currently, the Number of Staff at LOPS Will Need to be Expanded During the Implementation of PD21.

#13 – Compensation for Private Bar Members Who are Appointed to Conflict Cases is Among the Lowest in the Country.

#14 – Department of Public Advocacy Representation in Capital Cases Must Occur at the Trial, Direct Appeal, State Post-Conviction and Federal Habeas Corpus Level. As the Numbers of Death Penalty Case Findings Occur

and Previous Cases Work Their Way Through the Four Stage Process, Additional DPA Resources Are Needed.

Recommendations:

#1 – Indigent Defense is a Necessary Function of Government, and an Essential and Co-Equal Partner in the Criminal Justice System.

#2 – The Kentucky Public Defender System Cannot Play its Necessary Role for Courts, Clients, and the Public in this Criminal Justice System Without a Significant Increase in Funding.

#3 – The Full-Time System should be completed.

#4 – Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

#5 – Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders.

#6 – Full-Time Trial Staff Should Be Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.

#7 – The Department of Public Advocacy and the Court of Justice Must Increase their Efforts to Collect Reasonable Fees from Public Defender Clients, Including Considering the Use of Private Collection Organizations.

#8 – Prosecutor and Defender Increases Should be Considered when a Judicial Position is Added.

#9 – It is Important that Public Defender Counsel be Available to Children in Juvenile Court Proceedings.

#10 – It is Imperative that Kentucky Reasonably Fund Indigent Capital Defense both at the Trial and Post-Trial Levels.

#11 – Public Defender Services are Constitutionally Mandated while Resources are Scarce. It is Important for all Eligible Persons who want to be Represented by a Lawyer, but only those who are Eligible to be Appointed a Public Defender. The Court of Justice, and Especially AOC and DPA are Encouraged to Work Cooperatively to Ensure Appropriate Public Defender Appointments.

#12 – The \$11.7 Million Additional Funding for Each of the 2 Years Is Reasonable and Necessary to Meet DPA's Documented Funding Needs as Described in PD21.

If the DPA's level of funding is not increased to that recommended by the Blue Ribbon Group, there are a number of likely consequences.

- The statewide full-time plan will fail and a large number of counties will continue to be served by part-time contract attorneys unable to assist the judges in keeping the docket moving and not providing required counsel to some juvenile delinquents and misdemeanants.
- An even larger number of lawyers and support staff will leave the program and seek other employment due to the woefully inadequate salaries available.
- Full-time public defender caseloads will increase to the breaking point, particularly in cities such as Louisville.
- DPA will not be able to provide representation to all indigent defendants in the state and will have to

develop policies regarding courts that they cannot serve.

- Cases will have to be retried because of the inadequacy of counsel or the lack of counsel completely.
- The community will be frustrated, as well as all of the criminal justice agencies, because public defenders cannot perform their required tasks adequately.
- Without substantial additional funding, there is a likely risk that the Commonwealth of Kentucky could not adequately defend a statewide systemic lawsuit due to the inadequate resources and overwhelming caseload.

The Spangenberg Group firmly believes that the requested amount of \$11.7 million is reasonable, necessary and required. The Public Advocate's Plan for the 21st Century (PD21), and the work of the *Blue Ribbon Group*, is one of the most impressive undertakings that TSG has witnessed over the last 15 years of working in all 50 states. The plan typifies sound and responsible government. It is time for the Commonwealth to accept its responsibility to provide substantially increased funds for the DPA through a general fund appropriation.

Conclusion

Over the last several months, The Spangenberg Group has had an opportunity to look at the central administrative arm of the Department of Public Advocacy to see if they are managing their resources efficiently and looking for other sources of funding to add to the general fund appropriation. We believe that DPA's leadership has done, and is doing, all it can with the limited available resources to improve administration and efficiency. Having said this, it is obvious to The Spangenberg Group that there are also risks involved in the next biennium if the DPA's level of funding is not increased to that recommended by the *Blue Ribbon Group*. Among these risks are the following:

- The statewide full-time plan will fail and a large number of counties will continue to be served by part-time contract attorneys unable to assist the judges in keeping the docket moving and not providing required counsel to some juvenile delinquents and misdemeanants.
- An even larger number of lawyers and support staff will leave the program and seek other employment due to the woefully inadequate salaries available.
- Full-time public defender caseloads will increase to the breaking point, particularly in cities such as Louisville.
- DPA will not be able to provide representation to all indigent defendants in the state and will have to develop policies regarding courts that they cannot serve.
- Cases will have to be retried because of the inadequacy of counsel or the lack of counsel completely.
- The community will be frustrated, as well as all other criminal justice agencies because public defenders cannot perform their required tasks adequately.
- Without substantial additional funding, there is a likely risk that the Commonwealth of Kentucky could not adequately defend a statewide systemic lawsuit due to the inadequate resources and overwhelming caseload.

The Spangenberg Group firmly believes that the requested amount of \$11.7 million is reasonable, necessary and required. PD21, and the work of the Blue Ribbon Group, is one of the most impressive undertakings that TSG has witnessed over the last 15 years of working in all 50 states. It is sound and responsible government at its best. In

our judgement, it is time for the Commonwealth to accept its responsibility to provide substantially increased funds for the DPA through a general fund appropriation.

* The states selected were Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Tennessee, Virginia, West Virginia and Wisconsin

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